

### **REMARKS**

In the above-mentioned, Office Action, all of the pending claims, claims 1, 4, 5, 7, 9-20, 22, 23, 27-32, 36, and 37, were rejected. The claims were rejected over the combination of Park (WO 00/08706), Ue (US patent number 6,487,394), and Persson (US patent number 6,028,851).

In the rejection of the claims, the Examiner acknowledged that Park fails to disclose evaluation of a signal to noise ratio and a desired signal component value but relied upon Ue for disclosing these features. And, the Examiner further acknowledged that neither Park nor Ue disclose a desired signal component value transmitted from a mobile station. But, the Examiner relied upon Persson for disclosing this feature.

The Examiner further responded to the Applicants' earlier-submitted arguments and stated that the Applicants' recitation of "current network condition" is broad, and the Examiner suggested that the Applicants further define this limitation.

The Applicants acknowledge the Examiner's suggestion and also acknowledge the specificity of the portions of the cited references upon which the Examiner relied in the rejection of the claims.

In response, independent claims 1, 17, 36, and 37 have been amended, as set forth herein, in manners believed better to distinguish the invention of the present application over the cited combination of references.

With respect to exemplary claim 1, the recitation of the sending of the second signal from the mobile device to the base station is amended, further to state that the second signal

contains a desired preamble signal component SNR value desired by the mobile device to optimize a network performance criteria based upon current network conditions including at least one of interference, fading, and unbalanced RF, radio frequency links. Claims 17, 36, and 37 are analogously amended.

Support for the amendments is found in the disclosure, e.g., on page 4, lines 17-19, which states that the transmit power of the preamble is optimized to the current network conditions including interference, fading or unbalanced RF links.

While the Examiner relied upon Park for showing determination of a desired signal value for a signal component on page 14, line 3-page 15, line 7, Park fails to disclose that the desired value is to optimize a network performance criteria based upon current network conditions including interference, fading, or unbalanced RF links. And, while the Examiner indicated that Park teaches power control in order to optimize performance and that it would be obvious for Park to use current conditions, otherwise Park would not be optimizing the system if old measured conditions were instead used, the Applicants assert that optimization based upon current network conditions that are now recited are neither disclosed nor suggested in Park.

The Examiner further noted that Ue would similarly also be relevant. But, the Applicants also assert that Ue similarly also fails to disclose the sending by a mobile device of a signal containing a desired preamble signal component SNR value desired by the mobile device to optimize a network performance criteria based upon current network conditions including at least one of interference, fading, and unbalanced RF links.

And, Persson relied upon by the Examiner for showing transmission of a desired component signal to noise ratio value to optimize a network performance criteria based upon current network conditions also fails to disclose optimization of a network performance criteria based upon current network conditions including interference, fading, or unbalanced RF links. The cited portion of Persson, column 6, lines 60-column 7, lines 65 discloses an established SIR for a quality of service desired by a mobile station and discloses calculations performed by a mobile station. But neither the cited portion, nor other portions, of Persson appear to disclose optimization based upon interference, fading, or unbalanced RF links, as now-recited.

As none of the cited references disclose this feature, the Applicants assert that no combination of the cited references can be formed to create the invention of the independent claims, as now-presented.

The Applicants further note that the Examiner's stated rationale for combining the cited references in the cited manner was that the references pertain to manners by which to reduce interference and to improve system performance. And, the Applicants also note that a proper rationale for picking and choosing elements from disparate references must be supported by articulated reasoning (see, e.g., In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006) and In re Lee, 61 USPQ2d 1430, 1433 (Fed. Cir. 2002)), and should clearly and particularly lead one of ordinary skill in the art to make the claimed combination, Ruiz v. A.B. Chance Co., 234 F.3d 654, 660 (Fed. Cir. 2000).

Because the remaining dependent claims include all of the recitations of their respective parent claims, the dependent claims are believed to be patentably distinguishable over the cited combination for the same reasons as those given with respect to their parent claims.

Accordingly, in light of the foregoing, independent claims 1, 17, 36, and 37, and the dependent claims dependent thereon, are believed to be in condition for allowance. Accordingly, reexamination and reconsideration for allowance of the application respectfully requested. Such early action is earnestly solicited.

Respectfully submitted,

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